CHAPTER XV.

APPLICATION OF THE PENAL CODE TO FOREST OFFENCES.

SECTION I.—OFFENCES DIRECTLY CONNECTED WITH A FOREST OR ITS PRODUCE.

§ 1.—*When cases come under the Code.*

We have now considered the offences which are likely to be committed both in the forest itself and against the produce of forests while in transit as far as the Forest Act provides for them. I explained that some of these offences are most conveniently dealt with under the special forest law, while for others, it is desirable (owing to the *gravity* of the case or for some other reason) to have recourse to the ordinary criminal law as contained in the Indian Penal Code. I have now, therefore, to make some remarks on those offences punishable under the Indian Penal Code, which are directly connected with forests, or with their produce in transit.

Ordinary acts of mischief, trespass, petty theft of wood and produce, and offences against produce in transit, are, generally, best prosecuted under the Act and rules under section 25, and sections 32, 41, or 51 of the Forest Act (and similar sections of the Burma Act.) Those rules will suffice where no serious criminality is involved and where the limited scale of punishment contemplated by the Forest Act is adequate. We have, however, seen that many of these Acts *may* constitute an offence under the Penal Code, and where the offence is serious, and special criminality appears, the Code should be resorted to.

And besides those offences which *may come* under the Penal Code, there are also offences which, though directly connected with forests,

can only be dealt with with the aid of the Penal Code. There are also some offences, under the same Code, which are only indirectly connected with forests, but which may concern forest officers to know about.

§ 2.—*Theft and Misappropriation.*

The offences directly connected with forests, which come under Penal Code, are—

Theft or *criminal misappropriation*, with its attendant offences;
'Receiving stolen property;'
Mischief;
Criminal trespass;
Abetment of offences;
Attempts to commit offences.

Theft (section 378) refers always to *movable* property, and it is the essence of theft that the property should be in the *possession*[1] of the person robbed, at the time of the commission of the offence. As far as its being 'movable' is concerned, an act of cutting or separation, which severs an originally immovable article from the ground,—as the act of cutting grass from the soil, pulling fruit from a tree, severing the stem from the root stock,—such an act may have the effect at the same time of making the property movable and of being a theft. That is what the Code means by explaining that the act which effects the severance may also be a moving of the property which constitutes theft.

[1] See on the subject of possession, page 11, *ante*. The student will not fail to recognize the distinction between the offences of theft (378-9), criminal misappropriation (403), and criminal breach of trust (405, &c.) In the first the property is in the *possession* of the person robbed, in the second it is *not* in any one's *possession*; criminal misappropriation may be committed in respect of property found lying on a road; in the third case, the property is not only not in possession of the person robbed, but the wrong-doer is *himself* in possession, or has been entrusted with the property which he converts to his own use; and in proportion as the trust is more complete, the offence is considered as aggravated and is provided for accordingly by different sections, for example where the person entrusted with the property is a carrier (407), or a clerk or servant (408), or a public servant, or banker or agent (409).

If the property is not at the time in possession of any one, as if a log is laying on a river bank or island, or a bundle of grass by the roadside, then the offence is not theft but *criminal misappropriation.* (Section 403.) The "explanation" attached to this section in the code to this offence should be remembered. In the first place, a dishonest[2] misappropriation or conversion to a man's own use for a *time* only may be an offence. Supposing, for instance, a person having salved a log of teak should keep it in his yard and make no attempt to inform the Forest Officer, or to find the owner, this might be, according to the circumstances, a misappropriation punishable under section 403. It would be a question of fact whether the detention was for such a length of time as was not natural or necessary, supposing the accused person to have had an honest intention of finding the owner or a forest officer.

This example also includes the second explanation, which is that it is not misappropriation in the first instance, to take possession of property for the purpose of protecting it and restoring it to its owners, but it becomes an offence, as just stated, if within a reasonable time steps are not taken to give notice, or discover the owner.

It is not necessary that the finder of property should know who is the owner, or that any particular person is owner: he misappropriates it if he does not believe it is *his own* (and then makes no attempt to discover the owner.)

In ordinary cases, when no owner can be found, there cannot be a misappropriation, because then the thing really becomes "*res nullius.*" If I find a rupee lying on the high road (unless, of course, I have seen some one drop it, or there is some special exceptional probability to guide me), I may keep the rupee, since it is obvious that to find an owner is impossible. Under the Forest law however, as regards timber in transit, this excuse would rarely

[2] "Dishonest" by definition means an act which causes either "wrongful gain" to one party or "wrongful loss" to another, or both. "Wrongful" in this phrase means gain or loss which the person is not legally entitled to enjoy or to suffer, as the case may be.

avail, since Government is declared by law to be *primâ facie* owner *of all* unmarked, and drift timber, within certain limits.

A man could not, for example, pick up a sleeper lying on a sand bank, and say I may take this because it is so exactly like thousands of other sleepers that it is impossible for me to find an owner, for the owner is, by law, the Government.

Cases of *breach of trust* (sections 405-6) can hardly occur except in cases of contract to remove timber; but this is not really a direct forest offence, so I shall mention the subject afterwards.

§ 3.—*Receiving Stolen Property.*

Closely connected with theft is the offence of "receiving or retaining" stolen property, knowing or having reason to believe that the property is stolen.

This is an offence which, not being specifically mentioned in the Forest Act, must be prosecuted under the Penal Code. Any property the possession of which has been transferred by theft, extortion, or robbery, or which has been criminally misappropriated, or in respect of which a criminal breach of trust has been committed, is "stolen property." (Section 410). "Dishonestly" receiving or retaining this is punishable under section 411. And there are other sections following, which may also be applicable, for example the habitual dealing in such property is punished under section 413: and assisting in the concealment under section 414[3].

To sustain a charge of 'receiving' it is necessary to show (1) that the receipt or detention was *dishonest* (*i.e.*, with intention of causing wrongful loss or wrongful gain); this fact is usually to be inferred from the circumstances of the case; (2) the offender

[3] Under section 414 could be tried a bad case of "concealing" timber (see Forest Act, section 41 *h*), which would be insufficiently punished with six months' imprisonment. The section 414 provides for cases which are in fact very like the abetment of section 411. The accused does not himself 'receive' the stolen property, but he helps some one else in disposing or making away with it. As where a goldsmith melts down silver coins or ornaments for a receiver (knowingly) and so helps the thief or some receiver to conceal and dispose of his booty.

either knew or had reason to believe that the property was stolen, or obtained by misappropriation, &c. This is also usually to be established by the circumstances, such as the time and means of getting possession (whether at night, in secrecy, taking it at very much below its value, &c.,) the way in which he dealt with the property afterwards (such as burying or concealing it, &c.). These matters afford indication of guilty knowledge. Especially important is the common case where the accused cannot or will not say, how he came by the property[4].

§ 4.—*Mischief.*

Mischief is an offence defined by section 425, Indian Penal Code. To constitute it, there must be an *intention* to cause, or a *knowledge* that it is *likely to cause*, wrongful loss or damage to the public or to any person.

It is obvious that mischief may be of various classes, and so be of different degrees of criminality, according to the *means* employed in producing it, according to the *value* of the property injured or destroyed, and according to the nature or *public utility* of the property damaged.

[4] A very common mistake is the misapplication of section 411 in the following way. One of the commonest forms in which a theft case comes up is this: A has lost his cattle, timber, &c.; he has not actually seen any one steal it, but shortly after the loss, the property is recognized in the possession of B, who is either utterly unable to account for the possession, or else tells falsehoods about it. In that case the charge is under section 379, &c., and the inference is that he himself *stole* it, and not that *some one else stole* it and he *received* it (which is section 411). This is also the French law, that any one found in illicit possession of newly cut wood is presumed to have cut it). Curasson, II, 421; see also Mayne's I. P. Code, (9th ed.) page 311 and page 335. I laid emphasis on *recent* possession above because if it was only after the lapse of a considerable time that the property was discovered, there would be so much reason for probability of previous transfer and so forth that the inference (if any at al was justifiable) would be of 'receiving.' On this subject section 114 of the Evidence Act may usefully be referred to; the principle on which the rule proceeds is, that it is right to presume what is likely to have happened, regard being had to the course of natural events, human conduct, &c., in relation to the facts of the case.

Mischief relates to *property* (including animals), not to *men*. Offences against the human body—*murder*, causing *grievous hurt*, causing *hurt*, use of *criminal force* and *assault*, are treated under a special chapter in the Code.

Mischief in general, is punished by section 426. Recourse in forest cases would not be had to this section, because the minor forms of mischief (adequately punishable with fine or with imprisonment up to six months) are all specified in the Forest Act itself.

Mischief where the damage amounts in value to 50 rupees and more comes under section 427; and mischief by fire with intent (or guilty knowledge) of causing damage to the extent of 100 rupees value or upwards is punishable (the imprisonment may extend to seven years, with fine also) under section 437.

This section would be resorted to in grave cases of mischief by setting fire to a forest.

Mischief to landmarks (section 434) would usually be better charged under the special section (62) of the Forest Act.

Mischief to irrigation works, or water-supply works (of any kind and for any purpose) and mischief to roads, bridges, navigable channels, come under sections 430-1, and mischief to cattle (according to value) under sections 428-9.

§ 5.—*Criminal Trespass.*

Criminal trespass may be just mentioned, but it is not likely to be applied to forest cases, because the specific acts of trespass on forest property are provided against in the Forest Act. The section in the Indian Penal Code is 441. The offence consists in entering on property in the *possession* of another, with *intent* to commit an offence[5] or to intimidate, insult, or annoy any *person in possession of*

[5] Which here means an offence against any law if punishable with six months' imprisonment or more, since section 441 is one of the sections included in section 40 of the Indian Penal Code, which gives this extended meaning. As regards *possession* the student will observe another instance of the imoprtance of mastering the general principles of law, and why we spoke of *possession* at the outset. The Government is in possession of a demarcated or notified forest, and the guard or other officer on duty in it, is clearly also in possession.

such property : it also includes an unlawful *remaining,* with such intent, though the original entry may have been innocent.

Trespassing simply, i.e., without such intent, would not be punishable under the Indian Penal Code; but as it is undesirable to allow it in a reserved forest, where it is sure almost, to be the prelude to some forest offence, it is specially prohibited by the Forest Act, section 25*d*.

Under the Indian Penal Code, criminal trespass effected in a house or building develops into "house trespass," and if with precaution for concealment, into "lurking house trespass" (sections 443-4): if it is accompanied by an entry by a passage made by the offender, by opening a lock, by use of force, &c., &c., it becomes "house-breaking" (sections 445-50).

§ 6.—*Attempts.*

There are two remaining points connected with this part of our subject which may now be considered. It sometimes happens that a would be offender is stopped by some circumstance before his act has been fully accomplished. But it is obvious that his intention is just the same as if he had done the act, and the menace to society is the same. The criminal design is there, and everything else, except indeed the opportunity to carry the design into complete execution. The law therefore deals specially with inchoate crimes, which it calls "attempts."

The mere design or contemplation to commit an offence is not an attempt, nor is precedent preparation, without any act towards the offence; preparing a rope ladder which might be used in some subsequent house-breaking, for instance, would not be an 'attempt' at house-breaking. It is, however, not easy in all circumstances to say where the line is to be drawn between preparation for an offence, and those partial acts in prosecution of the offence itself which really constitute an "attempt." In America, a rule (which is certainly a very good general guide) has been laid down, that an attempt can only be said to take place where there have been "acts which would end in the consummation

of the offence, but for the intervention of circumstances independent of the will of the party."

The facts of the particular case require to be studied in order to determine whether there has been an *attempt*.

In some cases of grave crime, as rebellion and murder, attempts are specifically provided for as separate offences in the Code. But where this is not so, all "attempts" are punished under section 511.

The Code does not define an "attempt," but requires that to make an "attempt" penal *some act must be done towards*[6] *the commission of* the offence. And in general the punishment for an attempt is half that provided for the offence itself (of course in the absence of any special provision).

It is only an offence *punishable under* the *Indian Penal Code*, the attempt to commit which is punishable. "Attempts," therefore, in the case of lesser forest trespass and mischief should not be prosecuted[7].

It is only where the offence is serious, and would be clearly punishable under the Indian Penal Code, that a case of "attempt" could be successfully prosecuted.

§ 7.—*Abetment.*

Abetment may occur in forest cases, because the Indian Penal Code (section 108) speaks of abetment of an "offence," and the term here is explained, by section 40 of the Code, to include all offences whether punishable under the Code or under a special law, and irrespective of the amount of sentence to which they are liable.

Hence there was no occasion to make a special provision in the Forest Act regarding Abetment.

It is immaterial to the *existence* of the offence of abetment whether the principal offence is actually committed in consequence of

[6] Here read the illustration to section 511, Indian Penal Code.

[7] Attempts are in the French law punished as the crime itself (Code French 2-3) but no attempt is recognized as punishable if it is an attempt at a *délit* (a forest offence for example not coming under the penal law as a *crime*) unless some special law declares the attempt penal (*Curasson*, II, 429).

the abetment or not (section 108, explanation II), but this result *is very material* to the question of amount of punishment, as we shall see.

It is also immaterial that the principal offence is excused by any want of legal capacity to commit an offence in the person who did it. Thus a murder by a madman would be excused, but the abetment of such a person would be an offence all the same. (Section 108.)

The circumstances which constitute an abetment which the law recognizes, had best be learned from the very words of the section 107 itself with its two explanations and illustration. It runs as follows :—

"107. A person abets the doing of a thing who—

"*First.*—Instigates any persons to do that thing; or

"*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

"*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

"*Explanation.*—A person who by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

"A, a public officer, is authorized by a warrant from a court of justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

"*Explanation* 2.—Whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act."

If there is no special penalty for abetment[8], section 109 provides that if the offence *is* committed in consequence of the abetment the punishment is the *same* as for the offence itself. (See also the explanation at the end of section 108.)

[8] There is in a few cases, *e.g.*, abetment of suicide, abetment of murder, &c.